

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Newport News Division

JOANN WRIGHT HAYSBERT,

Plaintiff,

v.

CASE NO. 4:20cv121

BLOOMIN' BRANDS, INC.,  
and  
OUTBACK STEAKHOUSE OF  
FLORIDA, LLC,

Defendants.<sup>1</sup>

ORDER

On August 1, 2023, because there remained several outstanding rulings from the Final Pretrial Conference, the court held a Supplemental Final Pretrial Conference with counsel for both parties. To reflect the court's rulings and requests made by counsel, and after reviewing the objections and rulings contained in the Final Pretrial Order, entered July 29, 2022, ECF No. 243, as supplemented by the Supplemental Final Pretrial Order, entered August 5, 2022, ECF No. 254, the court has created a final document to govern which witnesses and exhibits will be presented at trial.

Accordingly, the court **ORDERS** that the attached exhibit and witness lists are incorporated herein and made a part hereof,

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<sup>1</sup> The court notes that the parties have stipulated that Defendant Bloomin' Brands, Inc. is the franchisor of Defendant Outback Steakhouse of Florida, LLC, the franchisee.

and shall supersede all other such lists in this case. The parties are **DIRECTED** to make all necessary updates to their trial binders in accordance with this Order, and to provide the original and two (2) copies of these updated binders to the Clerk, in addition to the copy provided to opposing counsel, by Monday, August 7, 2023, at or before 11:00 A.M. See ECF No. 233 at 1.

The Clerk is **DIRECTED** to send a copy of this Order to all counsel of record.

IT IS SO ORDERED.

  
\_\_\_\_\_  
/s/  
**Rebecca Beach Smith**  
**Senior United States District Judge**

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REBECCA BEACH SMITH  
SENIOR UNITED STATES DISTRICT JUDGE

August 2 , 2023

**PLAINTIFF'S FINAL EXHIBIT LIST**

<b>Exhibit Number</b>	<b>Description</b>	<b>Defendants' Objections</b>	<b>Court's Ruling</b>
P1	Haider Demonstratives and Images - Brain Map Animation, including brain cortex localization map	Objects on the grounds of relevance, speculation, foundation, and unfair prejudice. Federal Rules of Evidence 802, 402, 403.	Reserved - court orders that these are to be provided to the court and Defendants' counsel in advance of trial
P2	National Brain Injury Institute, Diffusion Tensor Images, By Dr. Aaron Filler, Dated September 18, 2020, and Demonstratives	Objects on the grounds of hearsay, foundation, speculation and relevance. Federal Rules of Evidence 802, 702, 703.	-Reserved question of admissibility -Overruled hearsay objection to machine generated images -Overruled challenge to Dr. Filler's expertise due to defense's failure to supply any information to the court to assess the challenge -Plaintiff agrees to redact findings on last page -Plaintiff agrees to have Dr. Filler update PPT to remove references to court rulings -Court orders that these exhibits are to be provided to Defendants' counsel and the court in advance of trial

P3	Excerpts of National Brain Injury Institute, Life Care Plan for JoAnn Haysbert, By Dr. Huma Haider, Dated June 22, 2021	Expert report is not properly admissible as evidence, is hearsay, lacks proper evidentiary foundation and requires expert testimony in person. Further, the expert report lacks evidentiary foundation, is speculative and is irrelevant to these proceedings. Federal Rules of Evidence 802, 702, 703.	-Reserved questions of foundation and admissibility of any R1006 or pedagogical summaries -Reserved issue of whether the table with numbers will be sent back with the jury -Sustained hearsay objection to expert's report -Plaintiff agreed to redact written statement on last page of exhibit -Court will not allow updates to this plan
P4	Defendant Bloomin' Brands, Inc.'s Verified Responses to Plaintiff's Special Interrogatories	Note: Defendants withdrew objection 8/1/23, except for questions and answers relating to company policies and procedures	Court orders that any question/answer about company policies/procedures be removed
P5	Defendant Outback Steakhouse of Florida, LLC's Verified Responses to Plaintiff's Special Interrogatives	Note: Defendants withdrew objection 8/1/23, except for questions and answers relating to company policies and procedures	Court orders that any question/answer about company policies/procedures be removed
P6	Outback Steakhouse, "Safety in the Outback - Reference Guide"	Plaintiff offers exhibits identified as policy and practice material for Outback Steakhouse to which Defendants object on grounds that internal policies and procedures do not establish standard of care, relevance, foundation and hearsay. Federal Rules of Evidence 402, 403.	-Sustained in part. <u>See Hottle v. Beech Aircraft Corp.</u> , 47 F.3d 106, 108-10 (4th Cir. 1995) (private internal rules cannot be use to fix standard of care under common law) -Reserved ruling on other uses of this exhibit

P7	Outback Steakhouse, "Best Practices: Prevention of Slips & Falls - General Practices"	Plaintiff offers exhibits identified as policy and practice material for Outback Steakhouse to which Defendants object on grounds that internal policies and procedures do not establish standard of care, relevance, foundation and hearsay. Federal Rules of Evidence 402, 403.	-Sustained in part. See <u>Hottle v. Beech Aircraft Corp.</u> , 47 F.3d 106, 108-10 (4th Cir. 1995) (private internal rules cannot be use to fix standard of care under common law) -Reserved ruling on other uses of this exhibit
P8	Outback Steakhouse, "Best Practices: Prevention of Slips & Falls - Proper Housekeeping"	Plaintiff offers exhibits identified as policy and practice material for Outback Steakhouse to which Defendants object on grounds that internal policies and procedures do not establish standard of care, relevance, foundation and hearsay. Federal Rules of Evidence 402, 403.	-Sustained in part. See <u>Hottle v. Beech Aircraft Corp.</u> , 47 F.3d 106, 108-10 (4th Cir. 1995) (private internal rules cannot be use to fix standard of care under common law) -Reserved ruling on other uses of this exhibit
P9	Outback Steakhouse, "Best Practices: Prevention of Slips & Falls - Slip-Resistant Footwear"	Plaintiff offers exhibits identified as policy and practice material for Outback Steakhouse to which Defendants object on grounds that internal policies and procedures do not establish standard of care, relevance, foundation and hearsay. Federal Rules of Evidence 402, 403.	-Sustained in part. See <u>Hottle v. Beech Aircraft Corp.</u> , 47 F.3d 106, 108-10 (4th Cir. 1995) (private internal rules cannot be use to fix standard of care under common law) -Reserved ruling on other uses of this exhibit

P10	Outback Steakhouse, "Best Practices: Prevention of Slips & Falls - Use of Mats"	Plaintiff offers exhibits identified as policy and practice material for Outback Steakhouse to which Defendants object on grounds that internal policies and procedures do not establish standard of care, relevance, foundation and hearsay. Federal Rules of Evidence 402, 403.	-Sustained in part. See <u>Hottle v. Beech Aircraft Corp.</u> , 47 F.3d 106, 108-10 (4th Cir. 1995) (private internal rules cannot be used to fix standard of care under common law) -Reserved ruling on other uses of this exhibit
P11	Video, Bloomin' Brands, Inc., "Clean and Safe Floors - Cleaning Up Spills," Runtime 2:46	Plaintiff offers exhibits identified as policy and practice material for Outback Steakhouse to which Defendants object on grounds that internal policies and procedures do not establish standard of care, relevance, foundation and hearsay. Federal Rules of Evidence 402, 403.	-Sustained in part. See <u>Hottle v. Beech Aircraft Corp.</u> , 47 F.3d 106, 108-10 (4th Cir. 1995) (private internal rules cannot be used to fix standard of care under common law) -Reserved ruling on other uses of this exhibit
P12	Outback Steakhouse, Architectural Floor Plans for Outback Store #4759, 4312 Portsmouth Blvd., Chesapeake, VA 23321, "A111," "A121," and "A131," Dated September 22, 2015	Note: Defendants' objection resolved, subject to counsel redacting references to camera, video, etc.	
P13	Photo of Incident Report Binder page, "Insurance Who to Contact List"	Object to photo of Incident Report Binder page on the grounds of relevance. Federal Rules of Evidence 402, 403.	-Reserved -Plaintiff to redact reference to "Insurance" and everything below "Internal Use Only"

P14	Work Order Request Number 95465523, Dated March 7, 2018	Object on the grounds of relevance, materiality and probative value. Federal Rules of Evidence 402, 403, 802.	-Reserved as to admissibility -Defendants agree this is an authentic business record
P15	CDC Materials/Guidance regarding TBI	Object on the grounds of hearsay, foundation, relevance, expert opinions without proper foundation, and unfair prejudice. Defendants reserve the right to assert additional objections once presented with the proposed exhibit.	Reserved
P16	Reserved - Other Demonstrative and Illustrative Materials, Charts, Summaries of Evidence, and PowerPoint Presentations	Reserved	Plaintiff's counsel advised that there were no other substantive exhibits, but he may offer demonstrative exhibits and summaries
TBD	Theresa Seibert Affidavit	Affidavit (and individual) not disclosed in Final Pretrial Order	Reserved issue of whether affidavit can be used for impeachment purposes

**DEFENDANTS' FINAL EXHIBIT LIST**

<b>Exhibit Number</b>	<b>Description</b>	<b>Plaintiff's Objections</b>	<b>Court's Ruling</b>
D1	Photograph of floor produced by Defendants	Subject to Motion <u>in Limine</u> and Ruling, Dkt. No. 235	Reserved
D2	Photograph of shoes produced by Defendants	Subject to Motion <u>in Limine</u> and Ruling, Dkt. No. 235	Reserved
D3	Curriculum vitae, Neil Pugach, M.D.	Objects on the grounds of hearsay, speculation, foundation, relevance and Rule 403.	Reserved
D4	Curriculum vitae, Abbot Huang, M.D.	Objects on the grounds of hearsay, speculation, foundation, relevance and Rule 403.	Reserved
D5	Photos of Plaintiff's scare JWH 0079-0080	Subject to Motion <u>in Limine</u> and Ruling, Dkt. No. 235	Reserved
D6	Photos of Plaintiff's shoes JWH 0081-0084	Subject to Motion <u>in Limine</u> and Ruling, Dkt. No. 235	Reserved
D7	Photos of Outback 8-16-18 JWH 0085-0087	Objects on the grounds of speculation, foundation, relevance, and Rule 403.	-Reserved -Defendants to remove portion of photos depicting camera
D8	Labor Punches at Outback, May 23, 2018		



TBD	2020 Fundraising Video for Hampton University featuring Plaintiff (offered for impeachment)	Objects on the grounds of hearsay, speculation, foundation, relevance and Rules 403, 608. Method and Type of Impeachment Is Not Clear and is Speculative Regarding Plaintiff's expected testimony. Also Subject to Motion <u>in Limine</u> and Ruling, Dkt. No. 235. Counsel denied existence of sub rosa.	-Reserved -Parties were previously ordered to meet and confer
TBD	April 2022 Video of Ceremony for retiring President of Hampton University featuring Plaintiff's remarks (offered for impeachment)	Objects on the grounds of hearsay, speculation, foundation, relevance and Rules 403, 608. Method and Type of Impeachment Is Not Clear and is Speculative Regarding Plaintiff's expected testimony. Also Subject to Motion <u>in Limine</u> and Ruling, Dkt. No. 235. Counsel denied existence of sub rosa.	-Reserved -Parties were previously ordered to meet and confer

**PLAINTIFF'S FINAL WITNESS LIST (INTEND TO CALL)**

<b>Witness Number</b>	<b>Witness</b>	<b>Defendants' Objections</b>	<b>Court's Ruling</b>
P1	Lisa Crosby 211 Summerhouse Lane Carrollton, VA 23314 (737) 506-922		
P2	Norman "Chip" Chase, Jr. 8135 Pace Road Norfolk, VA 23518		
P3	Alicia Elefherion		
P4	Nicholas Seifert 2636 Christopher Farms Drive Virginia Beach, VA 23453 (612) 387-3285		
P5	Marcus Wilson		
P6	Joi Myrick 500 Battista Court, Apt. 204 Chester, VA 23836		
P7	Deajah Clark 3360 Brandywine Drive Chesapeake, VA 23321 (757) 553-1038		
P8	Samantha Gump		
P9	Brad P. Avrit, PE 4124 Del Rey Avenue Marina Del Rey, CA 90292 (310) 306-3877	Object to his testimony on the grounds that it lacks proper evidentiary foundation, is irrelevant and will not assist the jury in assessing the subject incident which is a matter of common sense and does not require expert testimony. Rules 702, 703.	-Reserved -Court orders that expert report is to be provided to court in advance of trial

P10	Dr. Joel Feigenheimer, Ph.D. 144 Greens Road Hollywood, FL 33021	Object on the grounds of foundation, relevance, methodology and speculation. Rules 702, 703.	-Reserved -Court orders that expert report is to be provided to court in advance of trial
P11	Dr. Huma Haider, M.D. 6065 Hillcroft St., Suite 202 Houston, TX 77081	Object as the opinions fail under Rules 702 and 703 and lack of foundation.	-Reserved -Court orders that expert report is to be provided to court in advance of trial
P12	Dr. Aaron Filler, M.D., Ph.D., FRCS 2716 Ocean Park Blvd., Suite 1007B Santa Monica, CA 90405	Object as the opinions fail under Rules 702 and 703 and lack of foundation.	-Reserved -Court orders that expert report is to be provided to court in advance of trial
P13	Nineveh Haysbert		
P14	JoAnn Wright Haysbert		

**DEFENDANTS' FINAL WITNESS LIST (INTEND TO CALL)**

<b>Witness Number</b>	<b>Witness</b>	<b>Plaintiff's Objections</b>	<b>Court's Ruling</b>
D1	Lisa Crosby		
D2	Alicia Eleftherion	Note: Plaintiff withdrew objection based on Defendant's representation that witness will testify in individual capacity and as a corporate representative of Outback.	
D3	Marcus Wilson		
D4	Neil Pugach, M.D.	Restricted by Motion in <u>Limine</u> Ruling, Dkt. Nos. 234-35.	
D5	Abbot Huang, M.D.	Restricted by Motion in <u>Limine</u> Ruling, Dkt. Nos. 234-35.	
D6	Chris Robinson	Objects on the grounds of foundation, relevance, and speculation. Rules 702, 703.	Court allows testimony, and Plaintiff will have the ability to impeach

**DEFENDANTS' FINAL WITNESS LIST (MAY CALL)**

<b>Witness Number</b>	<b>Witness</b>	<b>Plaintiff's Objections</b>	<b>Court's Ruling</b>
D1	Chip Chase		
D2	Samantha Gump		
D3	Joy Myrick		
D4	Nick Seifert		